

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GLASS EGG DIGITAL MEDIA,  
Plaintiff,  
  
v.  
  
GAMELOFT, INC., et al.,  
Defendants.

Case No. [17-cv-04165-MMC](#)

**ORDER AFFORDING PLAINTIFF  
LEAVE TO FILE SURREPLY;  
CONTINUING HEARING ON  
DEFENDANT GAMELOFT SE'S  
MOTION TO DISMISS; CONTINUING  
CASE MANAGEMENT CONFERENCE**

Before the Court is defendant Gameloft SE's ("GLSE") Motion, filed January 21, 2022, "Pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6) to Dismiss Fourth Amended Complaint." Plaintiff Glass Egg Digital Media ("Glass Egg") has filed opposition, to which GLSE has replied. Having read and considered the parties' respective written submissions, the Court, for the reasons stated below, finds it appropriate to afford Glass Egg the opportunity to file a surreply.

In its Fourth Amended Complaint ("4AC"), Glass Egg alleges GLSE infringed Glass Egg's copyrights by obtaining and using digital car models made and owned by Glass Egg, and, in particular, by using the customized "number, placement and arrangement" of polygons drawn within the shape of a digital car (hereinafter, "polygon arrangement"). (See 4AC ¶ 246.)

In its motion, GLSE did not contend Glass Egg has not adequately alleged copyrightability with respect to any polygon arrangement. (See Def.'s Mot. at 21:24-23:20.) In its reply, however, GLSE, for the first time, argues that Glass Egg's allegations are insufficient to demonstrate the polygon arrangements are copyrightable, and, specifically, for the asserted reason that said allegations show Glass Egg "intended to

replicate the designs . . . of existing cars” and do not “suggest the polygon arrangements are separable from the shape and appearance of the cars.” (See Def.’s Reply at 14:22-15:12.)

In order to afford Glass Egg an opportunity to respond to the above-referenced new argument:


1. Glass Egg is hereby afforded leave to file, no later than April 15, 2015, a surreply, such filing not to exceed five pages in length.<sup>1</sup>

2. The hearing on GLSE’s motion to dismiss is hereby CONTINUED from April 8, 2022, to May 6, 2022, at 9:00 a.m.

In light of the above, the Case Management Conference currently scheduled for May 27, 2022, is hereby CONTINUED to June 17, 2022, at 10:30 a.m. A Joint Case Management Conference Statement shall be filed no later than June 10, 2022.

**IT IS SO ORDERED.**

Dated: April 1, 2022

  
MAXINE M. CHESNEY  
United States District Judge

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<sup>1</sup> By affording such leave, the Court makes no finding herein as to the jurisdictional issue.